THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0321, Tracey Bascio v. CorVel Healthcare Corporation, the court on June 8, 2006, issued the following order:

The plaintiff, Tracey Bascio, appeals the trial court's dismissal of the negligent misrepresentation and negligent infliction of emotional distress claims she brought against the defendant, CorVel Healthcare Corporation (CorVel). We affirm.

In reviewing the trial court's grant of a motion to dismiss, we ascertain whether the allegations pleaded in the plaintiff's writ are reasonably susceptible of a construction that would permit recovery. Berry v. Watchtower Bible & Tract Soc., 152 N.H. 407, 410 (2005). We assume all facts pleaded in the plaintiff's writ are true, and we construe all reasonable inferences drawn from those facts in the plaintiff's favor. Id. "We will not, however, assume the truth or accuracy of any allegations which are not well-pleaded, including the statement of conclusions of fact and principles of law." ERG, Inc. v. Barnes, 137 N.H. 186, 190 (1993). We then engage in a threshold inquiry that tests the facts in the complaint against the applicable law. Berry, 152 N.H. at 410.

The plaintiff first argues that the trial court erred by deciding, in the context of a motion to dismiss, that CorVel acted as the agent of the workers' compensation carrier of the plaintiff's employer. The plaintiff observes that: "Whether an agency relationship has been established is a question of fact." Herman v. Monadnock PR-24 Training Council, 147 N.H. 754, 758 (2002). Thus, the plaintiff contends, the court erred in finding an agency relationship as a matter of law where her writ did not contain sufficient factual allegations to permit this finding.

It is a long-standing rule that parties may not have judicial review of matters not raised in the forum of trial. N. Country Envtl. Servs. v. Town of Bethlehem, 150 N.H. 606, 619 (2004). The appealing party bears the burden of demonstrating that it raised its issues before the trial forum. Tiberghein v. B.R. Jones Roofing, Co., 151 N.H. 391, 393 (2004). "Issues must be raised at the earliest possible time, because trial forums should have a full opportunity to come to sound conclusions and to correct claimed errors in the first instance." SNCR Corp. v. Greene, 152 N.H. 223, 224 (2005) (quotation and brackets omitted). "This requirement is designed to discourage parties unhappy with the trial result to comb the record, endeavoring to find some alleged error never addressed by the trial judge that could be used to set aside the [decision]."

LaMontagne Builders v. Bowman Brook Purchase Group, 150 N.H. 270, 274 (2003) (quotation omitted).

Here, the plaintiff did not argue in her opposition to CorVel's motion to dismiss that the court lacked the facts necessary to decide whether CorVel was the agent of the workers' compensation carrier. At the hearing on the motion, the court expressly asked the parties if its decision was "going to hinge on any factual issue of whether [CorVel is] a managed care provider or just the legal interrelationship between the regulation and the statute?" To this question, the plaintiff's attorney responded that "[o]n a motion to dismiss[,] it's purely an issue of law." Later in the hearing, the plaintiff's attorney explained: "CorVel, the managed care organization[,] was not acting on behalf of the employer or the insurance company, and that is addressed in the statute, in the regulations and in the legislative history that I have included with the Memorandum of Law." Having led the trial court to believe that it could decide the agency issue based solely upon the applicable statutes and regulations, without holding an evidentiary hearing, the plaintiff is now precluded from implying on appeal that such a hearing was required. See id.

While the plaintiff moved for reconsideration of the court's order dismissing her writ, she has not provided this court with that motion. Thus, as the plaintiff has failed to demonstrate that she argued to the trial court that it could not decide whether CorVel and the workers' compensation carrier had an agency relationship absent further fact-finding, we decline to address this argument on appeal. See Tiberghein, 151 N.H. at 393.

We similarly decline to review the plaintiff's assertions that there was insufficient evidence for the court to have found that the necessary factual predicates for agency were met in this case, see Herman, 147 N.H. at 758-59, and that the trial court's ruling deprived her of her constitutional right to a remedy, see N.H. CONST. pt. I, art. 14. As the plaintiff has not demonstrated that she raised these arguments to the trial court, they are also not preserved for our review. See Tiberghein, 151 N.H. at 393.

The plaintiff next asserts that, pursuant to RSA 281-A:23-a (Supp. 2005), managed care programs, such as CorVel, as a matter of law, are not agents of an employer's workers' compensation carrier. The interpretation of a statute is a question of law, which we review de novo. Woodview Dev. Corp. v. Town of Pelham, 152 N.H. 114, 116 (2005). We are the final arbiters of the legislature's intent as expressed in the words of the statute considered as a whole. Id. We first examine the language of the statute, and, where possible, ascribe the plain and ordinary meanings to the words used. Id. When a statute's language is plain and unambiguous, we need not look beyond it for further indication of legislative intent, and we will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. It is our practice to

construe the Workers' Compensation Law liberally, resolving all reasonable doubts in statutory construction in favor of providing the broadest reasonable effect to the statute's remedial purpose of compensating injured employees. Appeal of Hypotherm, 152 N.H. 21, 24 (2005).

RSA 281-A:23-a is silent with respect to whether there is an agency relationship between a managed care association and an employer or the employer's workers' compensation insurer. RSA 281-A:23-a, I, provides, in pertinent part that: "An employer, employer's insurance carrier or self-insurer that is subject to the provisions of this chapter may satisfy the requirements and provisions of RSA 281-A:23 and the employee's rights under that section by providing a managed care program which has been approved by the commissioner." This language does not compel any finding with respect to whether a managed care association may be an agent of an employer or of the employer's workers' compensation insurer.

The plaintiff's reliance upon the legislative history of RSA 281-A:23-a is misplaced. RSA 281-A:23-a is not ambiguous with respect to whether there is an agency relationship; it simply does not address the issue at all.

The plaintiff next contends that New Hampshire Department of Labor regulations preclude managed care programs from acting as the agents of an insurance carrier. We do not share her interpretation of the applicable regulations. As with RSA 281-A:23-a, we view these regulations as silent with respect to whether a managed care program is the agent of the employer or the employer's workers' compensation carrier for workers' compensation purposes.

The plaintiff next argues that the trial court erred when it ruled that CorVel was not estopped from arguing that it was an agent of the workers' compensation carrier when it had taken the opposite position before the New Hampshire Department of Labor. The trial court and CorVel address this as a collateral estoppel issue. On appeal, the plaintiff argues that the "law of the case" doctrine precludes CorVel from changing its position. As the plaintiff did not argue "law of the case" before the trial court, we decline to address this argument on appeal. See Tiberghein, 151 N.H. at 393.

We have examined the plaintiff's remaining arguments and conclude that they lack merit and do not warrant extended consideration. See Vogel v. Vogel, 137 N.H. 321, 322 (1993).

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.